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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
12

13 Plaintiff,

14 v.

15 LUCIO NUNEZ-NUNEZ,
16

16 Defendant.
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CASE NO. 5:20-MJ-00009-JLT

STIPULATION FOR EXTENSION OF TIME FOR
PRELIMINARY HEARING PURSUANT TO
RULE 5.1(d) AND EXCLUSION OF TIME

DATE: March 30, 2020

TIME: 2:00 p.m.

COURT: Hon. Erica P. Grosjean

18 This case is set for a preliminary hearing on March 30, 2020. On March 16, 2020, this Court issued
19 General Order 611, which suspends all jury trials in the Eastern District of California scheduled to
20 commence before May 1, 2020. This General Order was entered to address public health concerns related
21 to COVID-19.

22 Although the General Order addresses the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness
24 with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United*
25 *States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under"
26 § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also*
27 *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and
28 ends-of-justice continuance must set forth explicit findings on the record "either orally or in writing").

STIPLULATION

1 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and
2 inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are
3 excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice
4 served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18
5 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record
6 of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
7 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

8 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4).
9 Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural
10 disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For
11 example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following the eruption of Mt.
12 St. Helens. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption
13 made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp.
14 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks
15 and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to
16 the prompt proceedings mandated by the statutory rules.

17 In light of the societal context created by the foregoing, this Court should consider the following
18 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice
19 exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status
20 conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance
21 must be “specifically limited in time”).

22 STIPULATION

23 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
24 through defendant’s counsel of record, hereby stipulate as follows:

- 25 1. By previous order, this matter was set for a preliminary hearing on March 30, 2020.
- 26 2. By this stipulation, defendant now moves to continue the preliminary hearing until April 29,
27 2020, and to exclude time between March 30, 2020, and April 29, 2020, under Local Code T4.
- 28 3. The parties agree and stipulate, and request that the Court find the following:

STIPLULATION

1 a) Counsel for defendant desires additional time to consult with their client, to review
2 the current Complaint, to conduct investigation and research related to the Complaint, to discuss
3 potential resolution with their client, and to otherwise prepare for trial.

4 b) Counsel for defendant believes that failure to grant the above-requested continuance
5 would deny him/her the reasonable time necessary for effective preparation, taking into account the
6 exercise of due diligence.

7 c) The government does not object to the continuance.

8 d) In addition to the public health concerns cited by General Order 611 and presented by
9 the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because
10 Counsel or other relevant individuals have been encouraged to telework and minimize personal
11 contact to the greatest extent possible. It will be difficult to avoid personal contact should the
12 hearing proceed.

13 e) Based on the above-stated findings, the ends of justice served by continuing the case
14 as requested outweigh the interest of the public and the defendant in a trial within the original date
15 prescribed by the Speedy Trial Act.

16 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et
17 seq., within which trial must commence, the time period of March 30, 2020 to April 29, 2020,
18 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
19 because it results from a continuance granted by the Court at defendant's request on the basis of the
20 Court's finding that the ends of justice served by taking such action outweigh the best interest of the
21 public and the defendant in a speedy trial.

22 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
23 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
24 must commence.

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STIPLULATION

1 IT IS SO STIPULATED.

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3 Dated: March 25, 2020

McGREGOR W. SCOTT
United States Attorney

4 /s/ ANGELA L. SCOTT
5 ANGELA L. SCOTT
6 Assistant United States Attorney

7 /s/ ANTHONY YIM
8 ANTHONY YIM
9 Assistant United States Attorney

10 Dated: March 25, 2020

/s/ KEVIN P. ROONEY
11 KEVIN P. ROONEY
12 Counsel for Defendant
13 LUCIO NUNEZ-NUNEZ
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STIPLULATION

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7 IN THE UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 UNITED STATES OF AMERICA,
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12 Plaintiff,

13 v.

14 LUCIO NUNEZ-NUNEZ,
15 Defendant.
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CASE NO. 5:20-MJ-00009-JLT

FINDINGS AND ORDER
EXTENDING TIME FOR PRELIMINARY
HEARING PURSUANT TO RULE 5.1(d) AND
EXCLUDING TIME

DATE: March 30, 2020
TIME: 2:00 p.m.
COURT: Hon. Erica P. Grosjean

17 The Court has read and considered the Stipulation for Extension of Time for Preliminary Hearing
18 Pursuant to Rule 5.1(d) and Exclusion of Time, filed by the parties in this matter on March 25, 2020.
19 The Court hereby finds that the Stipulation, which this Court incorporates by reference into this Order,
20 demonstrates good cause for an extension of time for the preliminary hearing date pursuant to Rule
21 5.1(d) of the Federal Rules of Criminal Procedure.

22 Furthermore, for the reasons set forth in the parties' stipulation, the Court finds that the interests of
23 justice served by granting this continuance outweigh the best interests of the public and the defendant in a
24 speedy trial. 18 U.S.C. § 3161(h)(7)(A). The Court further finds that the extension of time would not
25 adversely affect the public interest in the prompt disposition of criminal cases.

26 THEREFORE, FOR GOOD CAUSE SHOWN:

- 27 1. The date of the preliminary hearing is extended to April 29, 2020, at 2:00 p.m.
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2. The time between March 30, 2020, and April 29, 2020, shall be excluded from calculation pursuant to 18 U.S.C. § 3161(h)(7)(A).
3. Defendants shall appear at that date and time before the Magistrate Judge on duty.

IT IS SO ORDERED.

Dated: **March 26, 2020**

/s/ Eric P. Grogg
UNITED STATES MAGISTRATE JUDGE